



[4910-06-P]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Chapter II

[Docket No. FRA-2009-0057, Notice No. 3]

Statement of Agency Policy and Interpretation on the Hours of Service Laws as Amended; Delay of Effective Date of One Specific Interpretation

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Statement of agency policy and interpretation; delay of effective date.

SUMMARY: This document delays the effective date of a section of FRA's statement of agency policy and interpretation on the hours of service laws that was published in the Federal Register on February 29, 2012, and that is scheduled to take effect on May 29, 2012. In response to the document, several issues were brought to FRA's attention with regard to the feasibility of implementing one of the interpretations by the May 29, 2012 effective date. In response to those concerns, the present document delays the effective date of that specific interpretation until January 1, 2013. However, a railroad may choose to comply with the interpretation on or after May 29, 2012, and in advance of its new January 1, 2013, effective date. The effective date of all other interpretations contained in the February 29, 2012, statement remains May 29, 2012.

DATES: The effective date for section IV.B.1 of the statement of agency policy and interpretation published February 29, 2012, at 77 FR 12408, and originally effective on May 29, 2012, is delayed until January 1, 2013. All other sections of the statement of

agency policy and interpretation published February 29, 2012, remain effective on May 29, 2012.

FOR FURTHER INFORMATION CONTACT: Colleen A. Brennan, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., RCC-12, Mail Stop 10, Washington, DC 20590 (telephone 202-493-6028 or 202-493-6052); Matthew T. Prince, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., RCC-12, Mail Stop 10, Washington, DC 20590 (telephone 202-493-6146 or 202-493-6052); or Richard Connor, Operating Practices Specialist, Operating Practices Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue, SE., RRS-11, Mail Stop 25, Washington, DC 20590 (telephone 202-493-1351).

SUPPLEMENTARY INFORMATION: On February 29, 2012, FRA published its statement of agency policy and interpretation on the hours of service laws as amended (Final Interpretations), responding to public comments on FRA's earlier interim statement of policy, 74 FR 30665 (June 26, 2009), and clarifying additional questions concerning the hours of service laws. 77 FR 12408. In the Final Interpretations, FRA construed the word "day" for purposes of the statutory limitation on the number of consecutive days on which certain employees may initiate an on-duty period before being required to receive a certain rest period (i.e., 49 U.S.C. 21103(a)(4) (sec. 21103(a)(4)). In the Final Interpretations, FRA interpreted the word "day" for purposes of sec. 21103(a)(4) to refer to the 24-hour period ending when an employee is finally released from duty, and any new initiation of an on-duty period at any point during the 24-hour period following the employee's prior final release will have been initiated on a day

consecutive to the prior duty tour. This interpretation differed from the interpretation of what constitutes a “day” that was articulated in the interim statement of policy, which construed a “day” for the purposes of sec. 21103(a)(4) as a calendar day. FRA’s interim interpretations went into effect on July 16, 2009, and they have remained in effect. The Final Interpretations are scheduled to go into effect on May 29, 2012.

In response to the Final Interpretations, the Association of American Railroads (AAR) requested a meeting with FRA. The meeting took place on April 4, 2012, and included the AAR as well as several railroads in teleconference. At the meeting, FRA requested that the AAR put its concerns in writing. FRA received a letter from the AAR, dated April 9, 2012, requesting that FRA delay the effective date of the interpretation relating to the meaning of “day” in sec. 21103(a)(4), section IV.B.1 of the Final Interpretations, until January 1, 2013, and raising other concerns. FRA has posted the letter to the docket, Docket No. FRA-2009-0057. The letter argues that it is infeasible for railroads to comply with the interpretation by May 29, 2012, for three reasons:

First, the change to a 24-hour day requires significant programming changes for railroad information technology (IT) systems. These programming changes, which will require significant testing before they can be implemented, cannot be accomplished by May 29 or even shortly thereafter. Second, the change to a 24-hour day will require some railroads to hire additional employees Those railroads cannot hire and train employees by May 29. Third, the railroads need to update their training materials and train all affected employees on the new interpretation.

Recognizing that it may not be possible for some railroads to comply with the new interpretation by May 29, 2012, FRA is issuing this document, which delays the effective date of section IV.B.1, “What constitutes a ‘Day’ for the purpose of sec.

21103(a)(4)?” until January 1, 2013. All other sections of the Final Interpretations remain effective on May 29, 2012.

In its April 9, 2012, letter, the AAR also requests a transition period from December 1, 2012 until the requested January 1, 2013, effective date in order to allow railroads to comply with the new interpretation of “day” for purposes of sec. 21103(a)(4) in advance of the effective date, rather than requiring compliance with the interim interpretation until the effective date of the new interpretation. To provide flexibility, rather than establish a static transition date, FRA will allow a railroad to choose to comply with the new interpretation on any date on or after May 29, 2012, and prior to January 1, 2013. FRA suggests that railroads choosing to transition to the new interpretation prior to January 1, 2013, inform the appropriate FRA regional offices, to reduce confusion and avoid redundant information requests from FRA inspectors.

Transition to the new interpretation must be by a railroad in its entirety, rather than on an employee-by-employee or subdivision-by-subdivision basis. Were a railroad to try to transition piecemeal, employees would likely be forced to move frequently between the interim interpretation and the new interpretation as they moved between subdivisions of the railroad. The AAR noted the complexity of moving employees from the interim interpretation to the new interpretation in the context of a single transition date; allowing multiple transition dates for a single railroad would exacerbate these concerns.

FRA requests that Class I railroads provide monthly status reports to Richard Connor, FRA Operating Practices Specialist, at Richard.Connor@dot.gov or at the street

address listed above, starting July 1, 2012 and ending for each railroad after its transition to the new interpretation, to update FRA on the progress of each railroad toward resolving technological, training, and hiring issues, and any other issues that present an obstacle to compliance with the new interpretation. Such reports will allow FRA to ensure that railroads are working toward full compliance with the new interpretation no later than January 1, 2013. If FRA determines that railroads are not progressing toward implementation of the new interpretation, or if FRA is unable to gather the information necessary to make such a determination, FRA may publish an additional notice expediting the transition period.

Issued in Washington, DC, on April 25, 2012 .

Joseph C. Szabo,

Administrator.

[FR Doc. 2012-10487 Filed 04/30/2012 at 8:45 am; Publication Date: 05/01/2012]